THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.15712 OF 2006

DATED: 28TH JULY, 2006.

Between :

Sri Sudhir Kumar Agarwal .. Petitioner

And

1. M/s. Vijaya Bank, rep. by its Manger, Malakpet, Hyderabad, And another. .. Respondents

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WRIT PETITION NO.15712 OF 2006

ORDER :

The petitioner claims to be a tenant in respect of the mulgi in the ground floor of the Complex known as "J.P. House" bearing Municipal No. 4-4-949, Sultan Bazar, Hyderabad, having obtained the same on lease from the respondent No.2 herein.

It is stated that the lease in his favour is subsisting. However, it appears that the 2nd respondent created mortgage by depositing of title deeds relating to the property in occupation of the petitioner. While so, the 1st respondent having invoked the provisions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act') issued a notice under Section 13 (2) of the Securitisation Act on 20-12-2005 calling upon the 2nd respondent herein to discharge a sum of Rs.31,09,406/- due and payable under the loan account. He was also informed that the premises in question being a secured asset cannot be transferred either by way of sale or lease or otherwise.

The petitioner states that thereafter to his knowledge no order has been passed under Section 13 (4) of the Securitisation Act. However, on 24-7-2006 the officials of the 1st respondent Bank visited the premises in his occupation and asked the petitioner to vacate the same immediately. Though the petitioner expressed his inability to

vacate the premises, the officials of the 1st respondent Bank did not consider and insisted to deliver the vacant possession to them. Hence, this writ petition seeking a declaration that the action of the respondents in asking the petitioner to vacate the premises in question as arbitrary and illegal.

Since it is not in dispute that the premises in occupation of the petitioner is a secured asset and a notice under Section 13 (2) of the Securitisation Act was already issued, it is open to the 1st respondent Bank to take possession of the secured asset following the procedure prescribed under sub-section (4) of Section 13 of the Securitisation Act. Hence, the 1st respondent cannot be found fault with in asking the petitioner to deliver vacant possession. In case the petitioner is aggrieved by the said action, the same being one of the measures to recover the secured debt as provided under sub-section (4) of Section 13 of the Securitisation Act, it is always open to the petitioner to prefer an appeal as provided under Section 17 of the Securitisation Act before the Debts Recovery Tribunal having jurisdiction in the matter.

In the light of the said alternative remedy of appeal, the petitioner cannot invoke the jurisdiction under Article 226 of the Constitution of India.

Accordingly, granting leave and liberty to the petitioner to work out the appropriate remedy as available under law, Writ Petition is disposed of. No costs.

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(G. ROHINI, J.)

28th July, 2006.
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